

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|--------------------------------|
| LIONEL WALLEY, | § |
| | § No. 360, 2006 |
| Defendant Below- | § |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware |
| | § in and for New Castle County |
| STATE OF DELAWARE, | § Cr. ID No. 30100217DI |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: November 17, 2006

Decided: January 11, 2007

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 11th day of January 2007, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Lionel Walley, filed an appeal from the Superior Court's June 15, 2006 order denying his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we affirm.

(2) In February 1992, Walley was found guilty by a Superior Court jury of Possession with Intent to Deliver Cocaine, Possession of Drug Paraphernalia, and Resisting Arrest. He was sentenced as a habitual

offender to life imprisonment without the possibility of parole.¹ This Court affirmed Walley's convictions and sentences on direct appeal.²

(3) In this appeal, Walley claims that the Superior Court abused its discretion by not granting his motion to correct his sentence. He argues that his habitual offender sentence is illegal, first, because the State failed to establish the requisite number of predicate felonies to support his habitual offender status and, second, because the Superior Court did not hold a hearing separate from the sentencing hearing to determine his habitual offender status.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time." Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily authorized limits, violates double jeopardy, is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.³

(5) Walley's first claim is that the State failed to demonstrate that he had been convicted of the requisite number of felonies under the habitual

¹ Del. Code Ann. tit. 11, § 4214(b).

² *Walley v. State*, Del. Supr., No. 196, 1992, Walsh, J. (Mar. 17, 1993).

³ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

offender statute. The record reflects that, at the time he was declared a habitual offender, Walley had been convicted of Possession with Intent to Deliver Cocaine in 1992, Burglary in the Second Degree in 1983 and 1984, and Delivery of Cocaine in 1981. Even if Walley is correct that this last conviction should not be counted, the remaining convictions still provide a sufficient basis for Walley's status as a habitual offender.⁴ We, therefore, conclude that his first claim is without merit.

(6) Walley's second claim is that the Superior Court failed to hold a separate hearing to determine his habitual offender status. While Walley characterizes his claim as one arising under Rule 35(a), it is actually a claim that his sentence was imposed in an illegal manner under Rule 35(b). Such a claim is required to be asserted within 90 days of sentencing.⁵ Because Walley did not assert this claim in a timely fashion, it may not be considered here. Walley's second claim is, therefore, unavailing.

⁴ Del. Code Ann. tit. 11, § 4214(b).

⁵ Super. Ct. Crim. R. 35(b). While the Superior Court may consider "an application made more than 90 days after the imposition of sentence only in extraordinary circumstances or pursuant to 11 *Del. C.* § 4217," neither exception is applicable to this case.

NOW, THEREFORE, IT IS ORDERED that the judgment of the
Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice